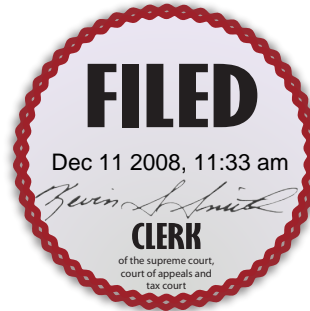


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM T. GILLAM,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A04-0804-CR-236

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No.71D02-0606-MR-00008

December 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

William T. Gillam (“Gillam”) was convicted in St. Joseph Superior Court of murder. He was sentenced to a term of sixty-five years. Gillam appeals and argues that the evidence was insufficient to support his murder conviction and that the sentence was inappropriate.

We affirm.

Facts and Procedural History

On May 10, 2006, Dane Marsh went to see his brother, Brennan Marsh (“Marsh”), after not hearing from him for a few days. When he arrived he saw a body lying on the kitchen floor. He entered the kitchen to find Marsh dead. Dane called the police, who determined that Marsh had been shot in the head more than a day before his body was found.

On June 5, 2006, the State charged Gillam with murder. During the jury trial, Yolanda Forrest, Gillam’s former girlfriend, testified that she had spoken on the telephone to Gillam on May 9, 2006. During the conversation, she had asked if Gillam had killed “that boy” to which Gillam answered in the affirmative. Also, a co-worker of Gillam’s testified that she had spoken with Gillam on the telephone on May 9, 2006 and he had asked her if she had heard what had happened to Marsh. After she responded that she hadn’t, Gillam told her that Marsh had been shot in the head. Gillam was convicted of murder. On March 20, 2008, the trial court sentenced Gillam to sixty-five years. Gillam appeals. Additional facts will be provided as necessary.

I. Sufficiency of the Evidence

Gillam argues that the State's only evidence linking him to the murder was Forrest's testimony and that testimony was unreliable because of a lack of corroborating facts and likelihood that Forrest based her statements on information gleaned from media accounts of the murder. Gillam concludes that since Forrest's testimony is incredibly dubious, the charges could not have been proven beyond a reasonable doubt. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Appellate courts may apply the "incredible dubiousity" rule to judge the credibility of a witness. This rule is expressed as follows:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

Fajardo v. State, 859 N.E.2d 1201,1208 (Ind. 2007) (quoting Love v. State, 761 N.E.2d 806, 810 (Ind. 2002)).

Under the facts and circumstances of the case, the incredible dubiousity rule does not apply. First, the testimony is not inherently improbable. Forrest testified that Gillam

told her that he had killed “that boy.” There is nothing inherently improbable about the testimony. Gillam is asking us to judge the credibility of Forrest as a witness which we will not do. Second, this case does not involve just one witness. Gillam’s co-worker testified that Gillam told her of Marsh’s death the day before the body was found. The evidence at trial shows that Gillam knew of the shooting death of Marsh before the body was discovered and reported to the police. Sufficient evidence exists to support Gillam’s conviction for murder.

II. Appropriateness of Sentence

Gillam argues that his sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, “[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Id. at 490.

The nature of the offense is heinous. Gillam knew Marsh and worked with him prior to the murder. Gillam stabbed Marsh five times and shot him in the head. Gillam left the body on the floor of Brennan’s apartment where it was discovered a few days later. Gillam’s character further reinforces the propriety of the sentence. Gillam has a criminal history that includes arson, criminal conversion, and felony breaking and

entering an occupied dwelling with intent. He was released on parole two years before the murder. Under these facts and circumstances, we conclude that Gillam's sentence is not inappropriate based on the nature of the offense and the character of the offender.

Conclusion

Under the facts and circumstances of this case, sufficient evidence supported Gillam's conviction. Gillam's sentence was not inappropriate based on the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and BROWN, J., concur.